CLOTURE

BY CHAMP CLARK

In the last days of February and the first days of March cloture was the resounding theme of every tongue, the text of every newspaper. The House of Representatives has it. The Senate is debating it.

"Cloture" is our word "closure" Gallicized. So far as its use in parliamentary bodies is concerned, Webster defines "closure" as follows: "A method of putting an end to debate and securing an immediate vote upon a measure before a legislative body. It is similar in effect to the *Previous Question.*"

In the House "the previous question," our name for cloture or closure, has been in use almost from the beginning and is of high privilege—only two other motions—"To adjourn" and "To lay on the table"—ranking it. With the large House membership we could not go very far without it. Mr. Speaker Reed once truthfully said: "All the rules of the House are intended to aid in the transaction of business; not to retard it." Most assuredly "the previous question"—that is, Shall the main question now be put?—tends to expedite the transaction of business. When Mr. Speaker Muhlenberg called the first House to order he presided over fifty-six members—Rhode Island and North Carolina not then being in the Union.

With so few members there was no necessity for "the previous question." In the earlier day there was time sufficient for the handful of members to talk to their hearts' content. The House is now composed of four hundred and thirty-five members, two Territorial Delegates, two Commissioners from the Philippines, and one from Porto Rico. It is patent that every member cannot speak *ad libitum.* When we conclude that there has been a *quantum sufficit* of debate, some member, usually the member having the bill in charge, moves the previous question. If that motion prevails, the bill is immediately voted on. If the motion for the previous question is defeated,

the control of the bill swings to the leader of the opposition to the bill.

"The previous question" is not in order in the Committee of the Whole or in the Committee of the Whole House on the State of the Union.

The history of the curtailment of speeches in the House is interesting and pertinent. Until early in 1812, while Henry Clay was serving his first term both as a member of the House and as Speaker, if a member could secure recognition he could talk as long as he pleased about anything and everything under heaven. Of all our famous public men, John Randolph of Roanoke had the least logical mind. He was much of a scholar, and possessed a wonderful store of information, for he had read almost everything worth reading. When the spirit moved him, which was quite frequently, he delivered orations three or four hours long, learned, sparkling, brilliant, on many topics, having no sort of connection with one another. Since St. Paul perhaps John C. Calhoun possessed the most logical and metaphysical mind. It so happened one day in the early part of 1812, while Mr. Speaker Clay was temporarily absent from the House, Randolph started in on one of his classical but rambling orations, whereupon Calhoun, who was acting Chairman of the Committee on Foreign Affairs and desired to present some measure touching the then prospective war of 1812, made the point of order that no member should be permitted to address the House unless some proposition, bill, resolution, amendment, or motion was pending. Mr. Bibb, of Georgia, Speaker *pro tempore*, overruled Calhoun's point of order, probably because he dreaded Randolph's fiery temper and sarcastic tongue, and the brilliant Virginian proceeded. After a while Clay returned and resumed the chair. Calhoun immediately made his point of order again, and Clay, who was afraid of neither man nor devil, sustained it. Thus was taken the first step in regulating speech-making in the House; but it did not curtail the length of speeches. Clay simply sustained Calhoun's point without giving any reason. Somebody, however, must have criticized his ruling, for shortly thereafter he wrote a letter to the Government organ in Washington explaining and justifying his decision.

House speeches were not shortened until 1841, when the feud between President Tyler and Clay became acute. Clay would secure the passage of Whig measures through the Senate and send them over to the House, where Henry A. Wise, who possessed the most extensive vocabulary known to our history,

aided and abetted by a small coterie of "Tylerites," talked Clay's bills to death. This infuriated "The Great Kentuckian," one of the most imperious of mortals, to such a degree that he induced the House, which was overwhelmingly Whiggish, to adopt "the hour rule" in order to put a bit in the mouth of Wise. From that day to this no man has been permitted to speak longer in the House than one hour except by unanimous consent—a most wholesome rule.

The longest speech delivered in the House in twenty years was Hon. Sereno Elisha Payne's nine-and-one-half-hour speech explaining and defending the Payne Tariff Bill. In reply to him I spoke five and one-half hours. To state the facts more accurately, we held the floor for nine and one-half and five and one-half hours respectively. What were called our speeches were really prolonged dialogues with divers and sundry members seeking information or endeavoring to bother us; but, as we were both speaking without limit by the courtesy of the House, and as he was Chairman of the Committee on Ways and Means and I the ranking Democrat on it, we could not in decency refuse to answer any pertinent question. As a matter of truth, we also answered many which were impertinent.

It goes without saying that the hour rule would have been adopted sooner or later even if Henry A. Wise, with his astounding vocabulary, had never gotten into action. It was a thing inevitable. The growing membership of the House would have forced it. I have learned that the enactment of a statute is frequently occasioned by the conduct of some one person. So in this case Henry A. Wise precipitated the adoption of the hour rule. He builded more wisely than he knew.

Clay, having succeeded by his vast influence in inducing the House, a body to which he did not belong, to bend to his iron will, was in high feather, and he went back to the Senate, of which he was a member, and endeavored to force the Conscript Fathers to adopt the hour rule. They, however, treated his ukase with contumely and scorn, and have turned up their august noses at the hour rule or any limitation whatsoever on debate in the less numerous branch of the National Legislature whenever or by whomsoever it has been suggested. They probably will continue so to do for some years to come.

During the fight on the Ship Purchase Bill, forty-five out of the ninety-six Senators voted for Senator James A. Reed's quasi-cloture motion on that particular bill; but it is apropos

to state that when they did that they were sleepy, weary, sore, and animated by a desire for revenge. Certainly they did not so vote "in a cool state of the blood." Anyway, the forty-five did not constitute a majority, and their votes are simply straws indicating the direction of the wind.

It is said that a cloture rule will be introduced in the Senate when it meets again, and debate will be had thereon. And such a debate—of such unheard-of length! Introducing a rule in the Senate and getting it adopted are two propositions very different.

The Senate began with twenty-two members. Certainly there was no necessity for any sort of cloture, mild or severe, in that far-away day. Now there are ninety-six, and many persons outside the Senate and some inside are clamoring for cloture; but this clamor is intermittent. When a stubborn filibuster is on, the clamor vexes the ears of men; at other times it dies out. But, it is to be remarked, the clamor for cloture always goes to one bill and to one filibuster! In any fair discussion as to what Senators are liable to do about cloture we would do well to remember what Senators will not forget for one moment when brought squarely face to face with a general cloture rule, and that is, that the regular of to-day is quite likely to be the filibuster of to-morrow, and *vice versa*. That thought may give them pause. Nor should it be forgotten that rules in parliamentary bodies are largely for the protection of the rights of the minority, and that majorities and minorities have a queer habit of changing places in this country.

Is filibustering ever justifiable? Any person curious on that subject might accumulate some useful information by inquiring of the men who poured a flood of vituperation upon the latest filibusters how they regard Arthur Pue Gorman, Matthew Stanley Quay, and James Donald Cameron, who led the successful filibuster against the Lodge Force Bill. If that is not sufficient, let the seeker after truth confer with the celebrated pundit, Senator Henry Cabot Lodge, who was one of the astutest managers of the triumphant filibuster against the Ship Purchase Bill, and discover what he thought of the great performance of Gorman, Quay, and Cameron when they killed his Force Bill. Verily, verily, much depends on whose ox is gored. Times change and men change with them.

The great argument against cloture in the Senate is that there should be some place in our system of government where

questions can be discussed fully—which is absolutely true; but even a good thing can be overdone, and unquestionably it is sometimes overdone in the Senate. Mere garrulity is not discussion, and in the Senate there is no limit to speech except human endurance—the endurance of the Senator who is doing the talking. When a filibuster against a particular measure is carried to such an extreme as to defeat measures absolutely necessary for the public welfare, it becomes not only a farce, but a nuisance, and should be abated.

Public opinion, when fully aroused, is an irresistible force. I once heard a great Senator say that no bill was ever defeated in the Senate which a clear majority of the American people really wanted. It might be delayed, but could not be indefinitely postponed. He cited the amendment providing for the election of United States Senators by popular vote and the Income Tax as samples. Therefore, according to his dictum, when Senators conclude that a majority of our people demand cloture in the Senate, then and not earlier the Senate will adopt cloture—mild, easy cloture, something midway between the severe cloture of the House and the utter lack of cloture in the Senate. They perhaps will adopt a rule that at the end of five or ten or fifteen or even twenty days of debate on any bill it will be in order to move the previous question on the bill or on the bill and all amendments to the final passage. Even that mild form of cloture is not likely to be adopted in a hurry, for the chances are that a majority of Senators do not believe that a majority of the people demand Senatorial cloture.

The average citizen considers legislative results more than legislative methods. So soon as he discovers, if he ever does, that beneficent and remedial legislation is blocked and defeated in the Senate by reason of a lack of cloture, he will force cloture, for in political and legislative matters the average citizen is supreme. From his fiat there is no appeal except to himself at some future day.

Writers on pugilists and pugilism are fond of quoting the sentence, "Youth will be served." That saying is applicable here, and the fact that the average age of Senators is so constantly reduced that the name Senator is slowly becoming a misnomer may force Senatorial cloture sooner than is generally expected.

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